

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 5703 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

ALBERT F. HYTT
S.S.A. No. -----

PRECEDENT
BENEFIT DECISION
No. P-B-282

FORMERLY BENEFIT DECISION No. 5703
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The above-named claimant on October 2, 1950, appealed from the decision of a Referee (SF-20425) which held that the claimant was ineligible for benefits under Section 57(c) of the Unemployment Insurance Act /now section 1253(c) of the Unemployment Insurance Code/. Oral argument was presented by the claimant's attorney to the California Unemployment Insurance Appeals Board on January 8, 1951, in San Francisco, California.

Based on the record before us, our statement of fact, reason for decision, and decision as follows:

STATEMENT OF FACT

The claimant has been employed as a pari-mutuel cashier at various race tracks in California, on an intermittent basis for the past eight years. He last worked in that occupation on August 5, 1950, when the track closed for the season. The claimant has college training in accounting and a degree in business administration. The claimant has had previous experience as a bartender, office manager, and accountant.

On July 27, 1950, the claimant registered for work as a pari-mutuel cashier and filed a new claim for unemployment insurance benefits in the San Francisco office of the Department of Employment. On August 25, 1950, the Department issued a determination holding

that the claimant was not available for work and was ineligible for benefits under the provisions of Section 57(c) of the Act /now section 1253(c) of the code/ for an indefinite period commencing August 14, 1950. The claimant appealed from this determination and a Referee affirmed the determination of the Department.

The claimant customarily earns his living as a pari-mutuel operator and sheet writer, auditor and cashier at all major race tracks in California. He is a member of the pari-mutuel guild and his union customarily notifies the claimant of work at the different race tracks by mail or telephone. At the time of registering for work with the Department and at subsequent interviews on August 17, and August 25, 1950, the claimant indicated that only work as a pari-mutuel cashier would be acceptable to him. In his appeal to the Referee dated August 25, 1950, the claimant stated, "In between racing days I'd gladly accept similar work at comparative earnings or commensurate pay." The claimant has contacted a friend who is attempting to arrange an interview for prospective employment for the claimant, another contact was made seeking employment as a hotel clerk but apparently no further efforts to seek employment were made. The claimant has a broken femur and requires the aid of a cane to walk. He cannot stand any great length of time. During World War II, he was unable to pass the physical examination to work in an aircraft plant. He has not looked for temporary work and contends that his physical condition and failure to pass a physical examination some time ago, excuse him from seeking such work. As of August 30, 1950, claimant returned to pari-mutuel cashier work at a race track.

REASON FOR DECISION

In the instant case, a preponderance of the evidence indicates that the claimant restricted acceptable employment to that of pari-mutuel cashier work. The claimant's statements relative to acceptable employment may not have been intended to have the effect they did, but they could be fairly interpreted only as having that meaning. The Department was justified in considering them to be words of limitation rather than preference (Benefit Decision No. 5484-12754). On August 25, 1950, the claimant in his appeal contended

that he would accept other suitable work but he has made a very negligible effort to secure other employment. He has also failed to seek temporary work during the off-season of his race track employment. In Benefit Decision No. 5124-6750, we held that a claimant unemployed by reason of a seasonal lay-off or slack period in the industry or establishment in which he is regularly employed, must be available for other suitable work provided that as a condition of accepting such intervening work, he may be permitted to return to his regular employment at any time he is called back to work. The facts herein are squarely within this principle. Therefore, the claimant must be available for at least temporary work, unless his physical condition and failure to pass an employer's physical examination preclude him from such work.

The claimant is able to do accounting, auditor and cashier work which is sedentary in nature. We have previously held that a failure to pass one employer's physical examination, of itself, does not render one unable to pass the physical requirements of another employer, particularly, when as here, there is no definite evidence presented showing a lack of ability to meet other employers' standards (Benefit Decision No. 4527-6169). As a result, under all the facts and circumstances of this case, it is our opinion that the claimant withdrew from the labor market and was therefore ineligible for benefits under the provisions of Section 57(c) of the Act /now section 1253(c) of the code/ for the period August 14, 1950, to August 30, 1950, when the claimant returned to work.

DECISION

The decision of the Referee is modified. The claimant is ineligible for benefits under Section 57(c) of the Act /now section 1253(c) of the code/ for the period August 14, 1950, to August 30, 1950.

Sacramento, California, February 9, 1951.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5703 is hereby designated as Precedent Decision No. P-B-282.

Sacramento, California, April 6, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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